

Clause 4 in Report No. 16 of Committee of the Whole was adopted, without amendment, by the Council of The Regional Municipality of York at its meeting held on October 15, 2015.

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Conservation Authorities Act Review

Committee of the Whole recommends adoption of the following recommendations contained in the report dated September 14, 2015 from the Commissioner of Environmental Services.

1. Recommendations

It is recommended that:

1. Council endorse this report on the *Conservation Authorities Act* Discussion Paper EBR 012-4509.
2. The Regional Clerk circulate this report to the Clerks of the local municipalities, Ministry of Natural Resources and Forestry, Conservation Ontario, Toronto and Region Conservation Authority (TRCA), and Lake Simcoe Region Conservation Authority (LSRCA) as acknowledgement of Council endorsement on or before October 19.

2. Purpose

This report provides a summary of proposed comments on the *Conservation Authorities Act* Review Discussion Paper and requests Council endorse positions included in this report, which will be submitted to the Ministry of Natural Resources and Forestry (the Ministry) ahead of the October 19 commenting deadline.

3. Background

Conservation Authorities have a long history of effectively protecting the environment

Conservation Authorities have existed in Ontario for nearly 70 years. During that time they have demonstrated commitment and success in protecting the environment and its inhabitants. A Conservation Authority's purpose is to deliver a local resource management program at the watershed scale and perform a number of services related to this mission. York Region works closely with the Toronto and Region Conservation (TRCA) and the Lake Simcoe Region Conservation Authority (LSRCA) to protect our local watersheds. It is estimated that nearly 50 per cent of the funding for Conservation Authorities across the province is provided by municipalities.

Provincial review of the *Conservation Authorities Act* will help set the future direction for Conservation Authorities

The Ministry of Natural Resources and Forestry (the Ministry) released a discussion paper to initiate a review of the *Conservation Authorities Act* (the Act). The Act is the empowering legislation for Conservation Authorities in Ontario. Responses from this review will likely be used by the Ministry to develop future proposals for changes to the Act to shape the mandate and funding of Conservation Authorities.

In the Discussion Paper, the Ministry is soliciting comments on three main areas: governance, funding mechanisms, and roles and responsibilities. Although these are the focus areas, the Ministry is also requesting other areas of interest be identified for review under the Act. This report will be submitted to the Ministry for the October 19, 2015 comment deadline.

4. Analysis and Options

Municipal representatives make up majority of board members and municipalities provide significant funding

Conservation Authorities are governed by a Board of Directors comprised largely of elected municipal officials. Currently the LSRCA board consists of 19 appointed members including 17 Councillors and Mayors. Four Regional Councillors and three local Councillors sit on the LSRCA board. The TRCA board currently consists of 28 appointed members including 22 Councillors and Mayors. Four Regional Councillors and one local Councillor sit on the TRCA board.

Regional representation on these boards amounts to approximately 37 per cent and 18 per cent respectively.

York Region provides a significant amount of funding for Conservation Authorities. In 2014, the Region provided \$5.2 million, or 35 per cent of LSRCA's annual \$14.6 million budget. For TRCA, the Region provided \$9.6 million or nine per cent of their annual \$100.1 million budget.

In general, York Region supports current board representation model

York Region has a long standing successful partnership with its respective Conservation Authorities. As a significant source of Conservation Authority program funding, municipal board member representation often allows for greater alignment of work planning between the Region and the Conservation Authorities. This also allows for greater accountability for all stakeholders, including residents and businesses in the watersheds. York Region supports the existing governance currently in place for LSRCA but is of the opinion that Regional representation should be increased for TRCA. Council submitted a request in December 2014 to formally request that TRCA increase York Region board positions to six based on population levels in accordance with the Act, which is currently under consideration.

Conservation Authority core mandate needs to be more clearly defined under the Act

To effectively evaluate governance issues, it would be beneficial for the Act to clearly define the core mandate of Conservation Authorities. Currently, the mandate for Conservation Authorities is quite broad and interpreted differently by individual Conservation Authorities based on watershed stresses, funding levels, local interests, and staff capacity. This leads to variation in mandates across different Conservation Authorities, which move beyond core watershed delivery priorities. Conservation Authority resources need to be directed toward watershed science and flood control, which will be impacted by climate change.

Roles and responsibilities currently authorized by the Act are very broad. This allows Conservation Authorities to tailor their role to address specific needs in their respective watershed, at times in addition to provincial/federal oversight. York Region has found that current roles and responsibilities sometimes extend past the protection intent of Conservation Authorities and attempt to address a wide range of environmental issues, such as green energy and evaluating construction design. For example, on some road infrastructure projects, Conservation Authorities have opposed certain construction practices and have mandated design aspects, along with construction sequencing, dewatering, and fisheries protection. In some cases, this is occurring without regard to

environmental impact studies confirming the Region's mitigation measures to be effective and appropriate.

While the spirit and intent behind these types of activities align with environmental protection goals, they extend beyond the core mandate of Conservation Authorities. Impacts from more intensified weather events will require a sharpened focus to evaluate and mitigate risks to the watershed, communities, and municipal infrastructure. York Region recommends the Ministry add more clarity to Conservation Authorities' core mandate as this will be increasingly critical in the coming years to help local watersheds effectively adapt to impacts of a changing climate.

Conservation Authorities and partners should review key programs to meet core mandate and eliminate duplication of effort

It is recommended that the Conservation Authorities initiate a review of key programs to identify core mandate items that should be prioritized for funding. It is also recommended that this review be conducted in collaboration with provincial and federal agencies in an effort to avoid any duplication or overlap with these agencies in program implementation, including baseline water quality monitoring and ecosystem health monitoring studies.

York Region also supports delegation of Provincial approval functions that demonstrate a direct watershed connection and increase efficiency and timely review of applications, such as permit approvals.

Defining core mandate in Act should outline strong link to core services and programs

Clearly outlining the mandate for Conservation Authorities and defining core services and programs would help board members and funding municipalities ensure operation of authorities match the intent of the Act. It would also allow for more robust criteria for funding proposed initiatives. In general, Conservation Authorities' roles should not conflict with municipal roles under the *Municipal Act*, *Planning Act*, Provincial Policy Statement, or other legislation.

Further, it is recommended that the Act clearly outline core mandate for Conservation Authorities and define core services and programs to require policies to have a clear and strong link to the following:

- Natural hazard management: Development and implementation of programs, services and initiatives related to natural hazard protection caused by flooding and erosion that protect people and property and that minimize or prevent the impacts caused by these hazards, including the impacts of climate change.

- Integrated watershed management: Provide oversight to ensure that water resources are protected, managed, and restored on a watershed scale.
- Natural heritage: Development and implementation of programs that protect natural resources and ensure that an integrated watershed management approach is applied to development/growth and natural resource management that do not conflict with municipal roles defined under the Provincial Policy Statement
- Climate change: Work with other stakeholders to monitor the changing climate, aggregate data on a watershed basis, model impacts of climate change, and share data with municipalities and the province to inform decision making that effectively considers a changing climate
- Education and outreach regarding the function and protection of the natural environment.

Role of various provincial and federal agencies should be clearly defined under the Act

The Ministry is responsible for overseeing the Act. However, the Discussion Paper identifies that the Minister has limited authority under the Act to intervene in day-to-day Conservation Authority activities and decisions. Consideration should be given to incorporate mechanisms into the Act to oversee or evaluate Conservation Authority decisions and activities similar to how other provincial entities or agencies are held to account by the Environmental Commissioner of Ontario or the Environmental Bill of Rights.

Provincial and federal governments have overarching programs that may impact watersheds, such as the Great Lakes Water Quality Agreement and policies to manage impacts of climate change. Provincial government policies should be integrated in watershed plans to manage issues such as erosion from high intensity storm events, nutrient loading from surface runoff and temperature changes all which impact the condition of streams and rivers.

It is recommended that the Act identify expectations of Conservation Authorities to reinforce core mandate

In an effort to ensure clarity, it is recommended that the Act clearly define and reinforce the core mandate of Conservation Authorities. It is also recommended that the Act include a requirement for Conservation Authorities to develop service standards. Specific service standards, including scope of review and response timelines could help stakeholders better manage their permit interactions with Conservation Authorities. In alignment with the Province's "Open for Business" approach, transparent fees and timelines for completing approvals will provide

greater process certainty to development proposals and projects that contribute to the Region's robust economy.

More consistent reporting of budgetary requirements would improve transparency and better inform funding needs

Currently, reporting requirements are not well defined under the Act and it is left to municipalities to coordinate reporting needs directly with Conservation Authorities. Programs could be better evaluated with a consistent reporting framework for Conservation Authorities across the province. Further, funding requests need to be clearly delineated between core and discretionary funding to ensure that decision makers are able to ensure that the core mandate of the Conservation Authority will be fulfilled prior to approving discretionary project funding.

Data generated by Conservation Authorities would be beneficial for private sector and could represent a potential funding source

Conservation Authorities are well equipped for on-the-ground data gathering on a watershed basis. These programs are valuable to the Region and local municipalities and require regular upgrading as science and time dictate. Funding for this data is good value as long as the data is gathered in a consistent manner. Similar principles should be followed for other groups that benefit from work performed by Conservation Authorities.

Based on this work performed by Conservation Authorities, there may be opportunities to collaborate on data collection and provision initiatives with municipalities and the private sector. For example, Conservation Authorities perform a large quantity of Natural Hazard Risk Assessments and other watershed and stormwater monitoring related to climate change. Many insurance companies are already performing similar work to determine rates based on risk.

It is recommended that the Act encourage Conservation Authorities to explore opportunities for the Province, municipalities, Conservation Authorities, and private industry to work collaboratively to gather this data. Collaboration has the potential to provide efficiencies for all involved and could introduce an additional avenue for funding of Conservation Authorities.

Recommend Province restore a 50-50 split for Conservation Authority funding

Historically, municipal and provincial governments supported Conservation Authorities by sharing program costs as their mandate supported the interests of the Province. In the past, every dollar invested by municipalities was matched by the Province to ensure equal cost sharing to deliver services; however, over time the provincial funding share has diminished. Provincial transfer payment amounts

to each Conservation Authority remain largely unchanged since 2000, resulting in a greater proportion of costs being borne by municipalities. Sections 26 and 27 of the Act requires municipalities pay any levy that is made by a Conservation Authority. Compounding this issue, have been increased requests for capital project funding from Conservation Authorities.

In 1997, the Ministry approved a new Policy and Procedures Manual for Determining Eligibility for Provincial Grant Funding to Conservation Authorities (Policy Statement), which remains in force. Under Policy Statement subsection 3.2.2, the Province committed to 50 per cent funding with municipalities for eligible components of flood management programs. Currently, the Province is providing funding in the range of 10 per cent to Conservation Authorities, with the majority of their funding (48 per cent) coming from municipalities. This contributes to funding pressures for Conservation Authorities and municipalities. Restoration of Provincial funding would free up tax levy and user rate funding for Regional programs that support the watershed such as source water protection, climate change mitigation, and energy conservation and demand management.

It is recommended that the Province restore historic funding levels for core mandate Conservation Authorities programs to a 50-50 split with municipalities to strengthen environmental program delivery provided by Conservation Authorities.

A re-investment by the Province, at the one to one matching standard would alleviate many funding shortfalls and property tax pressures.

Enforcement powers should be strengthened in the Act to allow Conservation Authorities to effectively deter violations

One important function that Conservation Authorities provide is enforcement of requirements of the Act; however, tools need to be updated to ensure effectiveness. The Act currently allows for a maximum financial penalty of \$10,000, if convicted. For some stakeholders, this is considered the cost of doing business if it amounts to less than the cost of sitting idle for a day. As a result, delays associated with complying with the Act can far exceed the cost of contravention.

Greater fines, enforcement tools, and capacities should be included under the Act to help ensure compliance, however, enforcement should be limited to items within the core mandate of Conservation Authorities. This should include allowing Conservation Authorities to issue stop work orders to reduce environmental impacts to the watershed. There should also be an ability to recoup the cost of mitigating damage caused as a result of contravention to the Act. Similar principles were proposed by the Province under the proposed Invasive Species Act. Strengthening enforcement powers of Conservation Authorities under the Act will help to effectively deter violations.

Ability to consider “ecological offsets” would provide greater environmental net community or resource benefits to urbanized watershed

Many municipalities across the province continue to experience significant growth. To balance the benefits of growth with potential impacts to the environment, the Region recommends Conservation Authorities consider "ecological offsets". This would allow Conservation Authorities and proponents to identify enhancements that will provide a community or resource benefit for projects proposed in urbanized areas. This approach would provide Conservation Authorities with the ability to perform ecological offsetting, also known as compensation, for removal of natural features in consultation with stakeholders. This practice could be used to attain a goal of no net loss of ecological function due to required development. Conservation Authorities should be required under the Act to define these ecological offsetting policies in consultation with their Board and stakeholders to responds to local conditions.

Conservation Authorities should sharpen focus on climate change adaptation

Climate change will have an impact on Conservation Authorities' ability to manage watersheds in an effective and safe manner. Natural hazard and flood mitigation will become increasingly difficult in the face of increasingly frequent and intense storms, which pose a threat to infrastructure. York Region is currently funding Conservation Authority programs related to stream monitoring near regional infrastructure to address these risks. As outlined under the core mandate section, Conservation Authorities should work with stakeholders to monitor changing climate, aggregate data on a watershed basis, and model impacts of climate change. This work should happen in conjunction with, but not duplicate climate change monitoring and modelling performed by provincial and federal governments. Information should be shared with municipalities to inform decision making that effectively considers a changing climate.

It is recommended that assessing and monitoring flooding impacts from climate change be considered a part of Conservation Authorities' core mandate.

Link to key Council-approved plans

Recommendations in this report support objectives outlined in the Regional Official Plan. Conservation Authorities are identified under Regional Official Plan Objective 2.3: “To maintain and enhance water system health to ensure water quality and quantity, and to maintain the natural hydrologic function of water systems.”

5. Financial Implications

Discussion Paper does not have direct financial impacts but funding for Conservation Authorities represents a significant cost to the Region

Currently, the Province is not proposing any specific regulatory changes to the Act so there are minimal direct impacts resulting from the Discussion Paper.

York Region provides a significant proportion of local Conservation Authorities funding. In 2014, the Region provided Lake Simcoe Region Conservation Authority \$5.2 million, or 35 per cent of their \$14.6 million budget. The Region provided Toronto and Region Conservation Authority, \$9.6 million or 9 per cent of their \$100.1 million budget. Although the current funding model has been operating effectively, Conservation Authorities consistently face budgetary pressures. It would be beneficial for the Province to increase their funding levels to better support watershed management.

Conservation Authorities are also encouraged to investigate options to address funding concerns including a heightened focus on their core mandate. Modernizing their approvals process to move toward a self-reporting model for low risk activities could provide increased revenue with reduced costs, which would help reduce budgetary pressures. Similar programs have been developed by other government ministries including the Federal Department of Fisheries and Oceans and the Ministry of the Environment and Climate Change.

6. Local Municipal Impact

Conservation Authorities deliver programs and help York Region meet its service objectives for residents and businesses in all local municipalities within York Region. Although local municipalities do not directly provide funding for Conservation Authorities they are impacted by Conservation Authority activities occurring within their borders.

York Region staff raised the Discussion Paper with local municipal staff at the September 14 Municipal Liaison Committee Meeting. A preliminary version of the comments was discussed and the proposed response was well received overall. Local municipal public works staff support the Region's positions and indicated their agreement with proposals for greater enforcement tools and the concept of ecological offsets.

7. Conclusion

Conservation Authorities provide an important service to York Region businesses and residents and have become a valued partner to the Region. Together, we provide essential watershed focused programming that protects our communities and critical public works infrastructure. As a significant source of Conservation Authority program funding, York Region would like to see greater mandate clarity enshrined in the Act for Conservation Authorities to focus on watershed protection and monitoring to provide better clarity for governance, funding, and roles and responsibilities.

For more information on this report, please contact David Szeptycki, Head of Strategy, Liaison, and Policy Implementation at ext. 75723.

The Senior Management Group has reviewed this report.

September 14, 2015

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